

2004 - Environmental Affairs House Pending Rule (Yellow)

ADMINISTRATIVE RULES REVIEW

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Legislative Session 2004

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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0301

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2004 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 6, 2003, Volume 03-8, pages 124 through 129. The agency received no public comments on the proposed rule, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

SECTION 39-107D, IDAHO CODE, STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal law or regulations.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Phyllis Heitman at (208)373-0502, pheitman@deq.state.id.us.

DATED this 24rd day of October, 2003.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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IDAPA 58, TITLE 01, CHAPTER 01

RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-8, August 6, 2003, pages 124 through 129.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

**September 8, 2003, 5:15 p.m.
Department of Environmental
Quality Conference Center
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The Rules for Control of Air Pollution in Idaho are updated annually in order to maintain conformance with EPA's regulations as well as fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act and 40 CFR Part 70. This proposed rule updates citations to federal regulations incorporated by reference to include those revised as of July 1, 2003. This update includes the Maximum Achievable Control Technology (MACT) Standards promulgated as National Emissions Standards for Hazardous Air Pollutants (NESHAPS). Access to federal regulations is no longer available at the physical address for the U.S. Government Bookstore as provided in Subsection 107.02; however, the web site address for obtaining federal regulations on line has been added.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Phyllis Heitman at (208) 373-0502 or pheitman@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 9, 2003.

DATED this 25th day of June, 2003.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0301

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)
- a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)
- b.** Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)
- c.** Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)
- d.** Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)
- e.** Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)
- f.** Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)
- g.** Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)
- h.** Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

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i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

04. Designated Representative. A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

05. Draft Permit. The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

06. Emergency. For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

07. Final Permit. The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

08. General Permit. A Tier I permit issued pursuant to Section 335. (3-23-98)

09. Insignificant Activity. Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

10. Major Facility. A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

a. For hazardous air pollutants: (3-23-98)

i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

b. For non-attainment areas: (3-23-98)

i. The facility is located in a "serious" particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a "serious" carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

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iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is "marginal" or "moderate", one hundred (100) tpy or more, if the area is "serious", fifty (50) tpy or more, if the area is "severe", twenty-five (25) tpy or more, and if the area is "extreme", ten (10) tpy or more. (3-23-98)

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant listed in Subsections 006.84.a. through 006.84.e. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-5-00)

i. Designated facilities. (3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

11. Part 70. Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2002~~3~~, are hereby incorporated by reference. (~~5-3-03~~)()

12. Permit Revision. Any permit modification, administrative amendment or reopening. (3-19-99)

13. Phase II Source. A source that is subject to emissions reduction requirements of 42 U.S.C. Section 7651 through 7651o and shall have the meaning given to it pursuant to those sections. (5-1-94)

14. Phase II Unit. A unit that is subject to emissions reduction requirements of 42 U.S.C. Sections 7651 through 7651o and the term shall have the meaning given to it pursuant to those sections. (5-1-94)

15. Proposed Permit. The version of a permit that the Department proposes to issue and forwards to the EPA for review. (5-1-94)

16. Section 502(b)(10) Changes. Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. (3-19-99)

17. Tier I Operating Permit. Any permit covering a Tier I source that is issued, renewed, amended, or revised pursuant to Sections 300 through 386. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

02. Availability Of Referenced Material. Copies of the documents incorporated by reference into

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DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0301
Proposed Rulemaking

these rules are available at the following locations:

(5-1-94)

a. All federal publications: ~~Superintendent of Documents~~, U.S. Government Printing Office, ~~Washington, D.C. 20402 at (202) 783-3238~~ <http://www.gpoaccess.gov/index.html>; and ~~(5-1-94)()~~

b. All documents herein incorporated by reference: (7-1-97)

i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

03. Documents Incorporated By Reference. The following documents are incorporated by reference into these rules: (5-1-94)

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Appendix W to Part 51--Guideline on Air Quality Models. 40 CFR Parts 51 and 52 revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

b. Implementation Plan for the Control of Air Pollution in the State of Idaho (SIP), Department of Environmental Quality, November 1996. (3-19-99)

c. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

d. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, Identification of Integral Vistas, Subsection a, 40 CFR Part 51.304(a), revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

e. Approval and Promulgation of Implementation Plans, 40 CFR Part 52, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

f. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

g. Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

h. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

i. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

j. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

k. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

l. Permits, 40 CFR Part 72, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

m. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

n. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2002~~3~~. ~~(5-3-03)()~~

o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0301
Proposed Rulemaking

p. Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2002~~23~~, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. ~~(5-3-03)~~(_____)

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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0301

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The amendments to the temporary rule were effective November 14, 2003. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule will become final immediately upon the adjournment sine die of the Second Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Idaho Code Sections 67-5224 and 67-5226, notice is hereby given that the Board has adopted a pending rule and amended a temporary rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to meet the requirements of 40 CFR 131.10(b) by setting water quality standards that protect designated uses in, and ensuring attainment and maintenance of the water quality standards of, downstream waters in Oregon and to meet the schedule for development of TMDLs. This rulemaking sets a standard that reflects the target for dissolved oxygen in the Snake River/Hell's Canyon TMDL. This target was the result of evaluation and agreement between Oregon and Idaho with input from a public advisory team. The rulemaking is also necessary to support the target in the TMDL. New Section 285 has been added to the water quality standards to provide for a site-specific standard for water-column dissolved oxygen in the Snake River along the Idaho/Oregon border. In addition, the description of water body unit SW-1 in Subsection 140.13 has been changed to correct an oversight as to the actual boundaries.

In June 2003 the Board adopted the rule as a temporary rule. In August 2003, the Department of Environmental Quality (DEQ) published the temporary/proposed rule, inviting the public to comment on the rule. Idaho Administrative Bulletin, August 6, 2003, Volume 03-8, pages 130 through 132. DEQ received public comments concerning the proposed rule and has revised the initial proposal at Section 285. Section 140 has been adopted as initially proposed. DEQ's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public and an explanation of the reasons for changes between the text of the proposed rule and the text of the pending rule, is included in the rulemaking record, which can be obtained by contacting the undersigned.

SECTION 39-107D, IDAHO CODE, STATEMENT: Section 39-107D, Idaho Code, provides that certain rulemaking requirements must be met if DEQ formulates and recommends to the Board a rule that is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government. Section 39-107D, Idaho Code, does not apply to the proposed site-specific criteria for dissolved oxygen because the adoption of the criteria are necessary to meet, but not exceed, federal law or regulations.

The Clean Water Act requires states to adopt water quality standards that must be submitted to and approved by the U.S. Environmental Protection Agency (EPA). EPA's Clean Water Act regulations at 40 CFR 131.10(b) provide that a state, in designating uses and criteria for those uses, shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

The state of Idaho and Oregon share, as a boundary, the Snake River. The state of Oregon water quality standards that apply to the Snake River differ from the applicable Idaho water quality standards for dissolved oxygen. As noted above, federal regulations require that Idaho's water quality standards ensure the attainment and maintenance of water quality standards of downstream waters, such as the Snake River in Oregon. In order to meet this federal requirement, the Board has adopted, as site-specific criteria, standards for dissolved oxygen that reflect Oregon's water quality standards. This rulemaking is also necessary to support the target for dissolved oxygen set forth in the Snake River/Hell's Canyon TMDL, which was developed as a requirement of federal law. Because this rule meets, but does not exceed, the requirements of federal law, the provisions of Section 39-107D, Idaho Code, do not apply.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit its web site at

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DEPARTMENT OF ENVIRONMENTAL QUALITY
Water Quality Standards/Wastewater Treatment

Docket No. 58-0102-0301 - Pending Rule
Amendment to Temporary Rule

www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Don Essig at (208)373-0502, dessig@deq.state.id.us.

Dated this 14th day of November, 2003.

Paula J. Gradwohl
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IDAPA 58, TITLE 01, CHAPTER 02

WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-8, August 6, 2003, pages 130 through 132.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0102-0301

SECTION 285 (Entire Section)

285. SNAKE RIVER, ~~SUBSECTION 130.01, HUC 17060101, UNIT S1, S2, AND S3;~~ SUBSECTION 140.13, HUC 17050115, UNIT SW1; AND SUBSECTION 140.19, HUC 17050201, UNITS SW1, SW2, SW3 AND SW4, SITE-SPECIFIC CRITERIA FOR WATER-COLUMN DISSOLVED OXYGEN.

The following criteria are to be met in the Snake River at the locations and time periods set forth below: (6-20-03)T

~~01. Hell's Canyon Dam To Salmon River. A minimum of eight (8) mg/l, or where conditions of barometric pressure, altitude, and temperature preclude attainment of eight (8) mg/l, dissolved oxygen levels shall not be less than ninety percent (90%) of saturation. At the discretion of the Department, when the Department determines that adequate information exists, dissolved oxygen shall not fall below a minimum of eight (8) mg/l as a thirty (30)-day mean, a minimum of six and five tenths (6.5) mg/l as a seven (7) day mean of daily minimums, and six (6.0) mg/l~~

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DEPARTMENT OF ENVIRONMENTAL QUALITY
Water Quality Standards/Wastewater Treatment

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Amendment to Temporary Rule

as an absolute minimum.

~~(6-20-03)F~~

~~02. **Hell's Canyon Dam To Salmon River During October 23 Through April 15, Where Salmonid Spawning Occurs.** A minimum of eleven (11) mg/l or nine (9) mg/l when the minimum intergravel dissolved oxygen, measured as a spatial median, is eight (8) mg/l or greater; provided, however, where conditions of barometric pressure, altitude, and temperature preclude attainment of eleven (11) mg/l or nine (9) mg/l, dissolved oxygen levels shall not be less than ninety five percent (95%) of saturation.~~

~~(6-20-03)F~~

~~03. **Idaho/Oregon Border To Hell's Canyon Dam.** A minimum of six and five-tenths (6.5) mg/l of water-column dissolved oxygen shall be met in the Snake River from the Idaho/Oregon border to Hell's Canyon Dam.~~

~~(6-20-03)F(11-14-03)T~~

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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective June 20, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 22, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to meet the requirements of 40 CFR 131.10(b) by setting water quality standards that protect designated uses in, and ensure attainment and maintenance of the water quality standards of, downstream waters in Oregon and to meet the schedule for development of TMDLs. New Section 285 has been added to the water quality standards to provide for a site-specific standard for water-column dissolved oxygen in the Snake River along the Idaho/Oregon border. In addition, the description of water body unit SW-1 in Subsection 140.13 is being changed to correct an oversight as to the actual boundaries.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final upon the conclusion of the 2003 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: Section 39-107D, Idaho Code, provides that certain rulemaking requirements must be met if DEQ formulates and recommends to the Board a rule that is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government. Section 39-107D, Idaho Code, does not apply to the proposed site-specific criteria for dissolved oxygen because the adoption of the criteria are necessary to meet, but not exceed, federal law or regulations.

The Clean Water Act requires states to adopt water quality standards that must be submitted to and approved by the U.S. Environmental Protection Agency (EPA). EPA's Clean Water Act regulations at 40 CFR 131.10(b) provide that a state, in designating uses and criteria for those uses, shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

The state of Idaho and Oregon share, as a boundary, the Snake River. The state of Oregon water quality standards that apply to the Snake River differ from the applicable Idaho water quality standards for dissolved oxygen. As noted above, federal regulations require that Idaho's water quality standards ensure the attainment and maintenance of water quality standards of downstream waters, such as the Snake River in Oregon. In order to meet this federal requirement, DEQ has proposed to adopt, as site-specific criteria, standards for dissolved oxygen that reflect Oregon's water quality standards. Because DEQ's proposed rule meets, but does not exceed, the requirements of federal law, the provisions of Section 39-107D, Idaho Code, do not apply.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule complies with deadlines in federal law and confers a benefit.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the temporary rulemaking schedule did not allow for the timing of it.

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DEPARTMENT OF ENVIRONMENTAL QUALITY
Water Quality Standards/Wastewater Treatment

Docket No. 58-0102-0301
Temporary and Proposed Rulemaking

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Susan Burke at (208)373-0502 or sburke@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 5, 2003.

DATED this 25th day of June, 2003.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
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(208)373-0418/Fax No. (208)373-0481
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0301

285. SNAKE RIVER, SUBSECTION 130.01, HUC 17060101, UNIT S1, S2, AND S3; SUBSECTION 140.13, HUC 17050115, UNIT SW1; AND SUBSECTION 140.19, HUC 17050201, UNITS SW1, SW2, SW3 AND SW4, SITE-SPECIFIC CRITERIA FOR WATER-COLUMN DISSOLVED OXYGEN.

The following criteria are to be met in the Snake River at the locations and time periods set forth below. (6-20-03)T

01. Hell's Canyon Dam To Salmon River. A minimum of eight (8) mg/l, or where conditions of barometric pressure, altitude, and temperature preclude attainment of eight (8) mg/l, dissolved oxygen levels shall not be less than ninety percent (90%) of saturation. At the discretion of the Department, when the Department determines that adequate information exists, dissolved oxygen shall not fall below a minimum of eight (8) mg/l as a thirty (30)-day mean, a minimum of six and five-tenths (6.5) mg/l as a seven (7) day mean of daily minimums, and six (6.0) mg/l as an absolute minimum. (6-20-03)T

02. Hell's Canyon Dam To Salmon River During October 23 Through April 15, Where Salmonid Spawning Occurs. A minimum of eleven (11) mg/l or nine (9) mg/l when the minimum intergravel dissolved oxygen, measured as a spatial median, is eight (8) mg/l or greater; provided, however, where conditions of barometric pressure, altitude, and temperature preclude attainment of eleven (11) mg/l or nine (9) mg/l, dissolved oxygen levels shall not be less than ninety-five percent (95%) of saturation. (6-20-03)T

03. Idaho/Oregon Border To Hell's Canyon Dam. A minimum of six and five-tenths (6.5) mg/l. (6-20-03)T

2856. -- 299. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
Water Quality Standards/Wastewater Treatment

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Surface waters found within the Southwest basin total nineteen (19) subbasins and are designated as follows:

(4-5-00)

Subsections 140.01 Through 140.12 Have No Changes

13. Middle Snake-Payette Subbasin. The Middle Snake-Payette Subbasin, HUC 17050115, is comprised of five (5) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
SW-1	Snake River - Boise River the Idaho/Oregon border to Weiser River	COLD	PCR	DWS
SW-2	Homestead Gulch - source to mouth			
SW-3	Ashlock Gulch - source to mouth			
SW-4	Hurd Gulch - source to mouth			
SW-5	Sand Hollow - source to mouth			

~~(4-5-00)~~(6-20-03)T*Subsections 140.14 Through 140.19 Have No Changes*

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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-0301

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require the Board to adopt amendments to federal law as set out in this pending rule.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 6, 2003, Volume 03-8, pages 133 through 139. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

SECTION 39-107D, IDAHO CODE, STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal law or regulations.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the proposed rulemaking, contact John Brueck at (208)373-0502 or jbrueck@deq.state.id.us.

Dated this 14th day of November, 2003.

Paula J. Gradwohl
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IDAPA 58, TITLE 01, CHAPTER 05

RULES AND STANDARDS FOR HAZARDOUS WASTE

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-8, August 6, 2003, pages 133 through 139.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 20, 2003. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. Optional federal regulations usually allow more flexibility to the regulated community; required federal regulations are necessary to maintain program primacy. Adoption by reference allows the Department of Environmental Quality (DEQ) to keep its rules up to date with federal regulation changes and minimizes the EPA Region 10 effort needed to keep Idaho's authorization current. Adoption by reference also simplifies compliance for the regulated community, who must only comply with one set of regulations. This proposed rule updates citations to the federal regulations incorporated by reference to include those revised as of July 1, 2003. Additional changes include technical corrections to corresponding federal regulations in Sections 005, 009, and 011 and clarification of the definition of Director in Subsection 015.01. Access to federal regulations is no longer available at the physical address for the U.S. Government Bookstore as provided in Subsection 002.02; however, the web site address for obtaining federal regulations on line has been added.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact John Brueck at (208)373-0502 or jbrueck@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 3, 2003.

Dated this 25th day of June, 2003.

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DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules and Standards for Hazardous Waste**Docket No. 58-0105-0301**
Proposed Rulemaking

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0105-0301

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260-266, 268, 270, 273, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2002~~3~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(5-3-03)~~()

01. Exceptions. Nothing in 40 CFR Parts 260 - 266, 268, 270, 273, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (7-2-97)

02. Availability Of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

a. ~~Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206)553-4270~~ <http://www.gpoaccess.gov/index.html>; and ~~(7-2-97)~~()

b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)

c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (7-2-97)

(BREAK IN CONTINUITY OF SECTIONS)

004. HAZARDOUS WASTE MANAGEMENT SYSTEM.

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. ~~(5-3-03)~~()

005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

40 CFR Part 261 and all Subparts, except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), except remanded waste codes "K064, K065, K066, K090 and K091" listed in 40 CFR Part 261 Appendix VII, except "49 CFR 173.300" in 40 CFR 261.21(a)(3) as replaced with "49 CFR 173.115 or equivalent test methods in Chapter 7 of SW-846," except "49 CFR 173.151" in 40 CFR 261.21(a)(4) as replaced with "49 CFR 173.127" and except 40 CFR 261.23(a)(8), are herein incorporated by reference as provided in 40 CFR, revised as of

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July 1, 2002~~3~~. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. ~~(5-3-03)~~(____)

01. Excluded Wastes. Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by EnviroSAFE Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

b. Initial Verification Testing. (3-16-96)

i. For purposes of Subsections 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)

vi. For purposes of Subsections 005.01.b. and 005.01.c., "batch" shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)

c. Subsequent Verification Testing. (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the

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CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

d. Delisting Levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06
arsenic	0.50
barium	7.60
beryllium	0.010
cadmium	0.050
chromium	0.33
lead	0.15
mercury	0.009
nickel	1
selenium	0.16
silver	0.30
thallium	0.020
vanadium	2
zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

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- e. Modification of Treatment Process. (3-16-96)
- i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)
- ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)
- iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)
- iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)
- f. Records and Data Retention and Submittal. (3-16-96)
- i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)
- ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)
- iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)
- iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)
- g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. Incorporation By Reference. 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002³. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), "Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.51, 262.53, 262.54(g)(1), and 262.85(g), EPA shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR

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262.41(a)(4), "United States or U.S." shall be defined as the United States.

(~~5-3-03~~)()

02. Generator Emergency Notification. In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report.

(3-15-02)

007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), "United States" shall be defined as the United States.

(~~5-3-03~~)()

008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR Subsection 264.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.1082(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency.

(~~5-3-03~~)()

009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) and except the language contained in 40 CFR 265.340(b)(2) as replaced with, "The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part.", are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR Subsection 265.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.1083(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency.

(~~5-3-03~~)()

010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.

40 CFR Part 266 and all Subparts (~~excluding Subparts A and B~~) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~.

(~~5-3-03~~)()

011. LAND DISPOSAL RESTRICTIONS.

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), "Administrator" shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), "D009" is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV). In 40 CFR 268.48(a), the entry for "2,4,6-Tribromophenol" is excluded.

(~~5-3-03~~)()

012. HAZARDOUS WASTE PERMIT PROGRAM.

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively.

(~~5-3-03~~)()

2004 - Environmental Affairs House Pending Rule (Yellow)

013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).

40 CFR Part 124, Subparts A and B are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~, except that the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. ~~(5-3-03)~~(_____)

(BREAK IN CONTINUITY OF SECTIONS)

015. STANDARDS FOR THE MANAGEMENT OF USED OIL.

01. Incorporation By Reference. 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 279.43(c)(3)(ii) "Director" shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. ~~(5-3-03)~~(_____)

02. Used Oil As A Dust Suppressant. 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must:

(2-11-94)

a. Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. ~~(5-3-03)~~(_____)

2004 - Environmental Affairs House Pending Rule (Yellow)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0302

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code. In addition, states which have primary enforcement responsibility for the Safe Drinking Water Act are required by 40 CFR 142.10(a) and 40 CFR 142.12(b) through (d) to adopt within two years of promulgation, national primary drinking water regulations that are no less stringent than the federal regulations in effect under 40 CFR Part 141.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, July 2, 2003, Volume 03-7, pages 83 through 85. The agency received no public comments on the proposed rule, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

Pursuant to Section 67-5228, Idaho Code, this rulemaking also includes a correction to transcription errors found in Sections 300, 550, 551, and 552. References to Subsection 002.01 have been changed to 002.02.

SECTION 39-107D, IDAHO CODE, STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tom Aucutt at (208)373-0502, taucutt@deq.state.id.us.

DATED this 14th day of November, 2003.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58, TITLE 01, CHAPTER 08

IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-7, July 2, 2003, pages 83 through 85.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

2004 - Environmental Affairs House Pending Rule (Yellow)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0302

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapter 1, Title 39, Idaho Code and Chapter 21, Title 37, Idaho Code. In addition, states which have primary enforcement responsibility for the Safe Drinking Water Act are required by 40 CFR 142.10(a) and 40 CFR 142.12(b) through (d) to adopt within two years of promulgation, national primary drinking water regulations that are no less stringent than the federal regulations in effect under 40 CFR Part 141.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before July 16, 2003. If no such written request is received, a public hearing will not be held.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The U.S. Environmental Protection Agency promulgated minor revisions to the Public Notification Rule and the Consumer Confidence Rule on November 27, 2002. These rules are national primacy drinking water regulations. As a state that has primacy for administering the Safe Drinking Water Act, Idaho must adopt these minor revisions within two years. The purpose of this rulemaking is to adopt these federal regulations by reference into the state rules.

Public Notification Rule: The Public Notification Rule requires public water systems to send notifications alerting their customers to drinking water system violations, waterborne emergencies, and other issues of potential concern. The minor revisions to this rule change the language for the health effects of two contaminants found in drinking water as listed in 40 CFR 141, Subpart Q.

Consumer Confidence Rule: The Consumer Confidence Rule requires community water systems to distribute annual water quality reports to their customers. The minor revisions to this rule change the language for the health effects of two contaminants found in drinking water as listed in 40 CFR 141, Subpart O. In addition, the Consumer Confidence Rule revisions include minor changes to address errors in the list of major health sources for copper and the rearrangement of regulatory and health effects language for disinfection byproducts within 40 CFR 141, Subpart O.

This rulemaking also deletes two subsections that are repetitive or no longer necessary (Subsections 301.06 and 400.05). Subsection 301.06 is repetitive of Subsection 150.06 because they both incorporate by reference 40 CFR 141.175. Subsection 400.05 is no longer necessary because the federal regulation incorporated by reference at 400.05 (40 CFR 143.5) is now included in 40 CFR 141, Subpart Q, which is incorporated by reference at Subsection 150.02.b. In addition, incomplete CFR citations found in Section 400 have been completed by adding the revision dates for those citations.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature.

SECTION 39-107D, IDAHO CODE STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at

2004 - Environmental Affairs House Pending Rule (Yellow)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Idaho Rules For Public Drinking Water Systems

Docket No. 58-0108-0301
Proposed Rulemaking

www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Tom Aucutt at (208)373-0502, taucutt@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before July 30, 2003.

DATED this 15th day of May, 2003.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0108-0302

150. REPORTING, PUBLIC NOTIFICATION, RECORDKEEPING.

01. Reporting Requirements. 40 CFR 141.31, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

02. Public Notification. 40 CFR 141, Subpart Q, revised as of July 1, 2002~~3~~, is herein incorporated by reference. (~~5-3-03~~)()

03. Record Maintenance. 40 CFR 141.33, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

04. Unregulated Contaminant Reporting And Public Notification. 40 CFR 141.35, revised as of July 1, 2003, is herein incorporated by reference. (~~10-1-93~~)()

05. Reporting And Record Keeping For The Interim Enhanced Surface Water Treatment Rule. 40 CFR 141.175, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

06. Reporting And Record Keeping Requirements For The Disinfectants And Disinfectant Byproducts Rule. 40 CFR 141.134, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

151. CONSUMER CONFIDENCE REPORTS. 40 CFR Part 141, Subpart O, revised as of July 1, 2002~~3~~, is herein incorporated by reference. (~~5-3-03~~)()

(BREAK IN CONTINUITY OF SECTIONS)

2004 - Environmental Affairs House Pending Rule (Yellow)

301. ENHANCED FILTRATION AND DISINFECTION - SYSTEMS SERVING TEN THOUSAND OR MORE PEOPLE.

This Section incorporates, 40 CFR Part 141, Subpart P, of the National Primary Drinking Water Regulations, known as the Interim Enhanced Surface Water Treatment Rule. (4-5-00)

01. **General Requirements.** 40 CFR 141.170, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

02. **Criteria For Avoiding Filtration.** 40 CFR 141.171, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

03. **Disinfection Profiling And Benchmarking.** 40 CFR 141.172, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

04. **Filtration.** 40 CFR 141.173, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

05. **Filtration Sampling Requirements.** 40 CFR 141.174, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

~~06. **Reporting And Record Keeping.** 40 CFR 141.175, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

400. SECONDARY MCLS.

01. **Purpose.** 40 CFR 143.1, revised as of July 1, 2003, is herein incorporated by reference. (10-1-93)()

02. **Definitions.** 40 CFR 143.2, revised as of July 1, 2003, is herein incorporated by reference. (10-1-93)()

03. **Secondary Maximum Contaminant Levels.** 40 CFR 143.3, revised as of July 1, 2003, is herein incorporated by reference. (10-1-93)()

04. **Monitoring.** 40 CFR 143.4, revised as of July 1, 2003, is herein incorporated by reference. (10-1-93)()

~~05. **Compliance And Public Notification.** 40 CFR 143.5 is herein incorporated by reference. (10-1-93)~~

2004 - Environmental Affairs House Pending Rule (Yellow)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-0301

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Section 39-4405, Idaho Code.

DESCRIPTIVE SUMMARY: This rulemaking has been undertaken to avoid the potential for radioactive material to be introduced into the environment by indiscriminate disposal. The rule requires that authorities be contacted prior to disposal. In August 2003 the Board adopted the rule as a temporary rule. In October 2003, the Department of Environmental Quality (DEQ) published the temporary/proposed rule, inviting the public to comment on the rule. The rule has been adopted as initially proposed in the Idaho Administrative Bulletin, October 1, 2003, Volume 03-10, pages 586 through 587. DEQ's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public and an explanation of the reasons for adopting the rule is included in the rulemaking record, which can be obtained by contacting the undersigned.

SECTION 39-107D, IDAHO CODE, STATEMENT: The rule regulates an activity not regulated by federal law. Federal law, via the Atomic Energy Act of 1954, as Amended (the AEA) regulates the disposal of a large portion of, but not all, radioactive materials. Individual states are left to regulate the disposal of non-AEA radioactive materials. Idaho fulfills this regulatory need with its Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, as Amended, IDAPA 58.01.10. (Idaho's Radioactive Materials Rules). This rule modifies Idaho's Radioactive Materials Rules by adding a notification requirement that applies to all persons with knowledge of radioactive materials being transferred for disposal to a prohibited location, an area not regulated by federal law.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the proposed rulemaking, contact John Brueck at (208)373-0502 or jbrueck@deq.state.id.us.

Dated this 14th day of November, 2003.

Paula J. Gradwohl - Environmental Quality Section
Attorney General's Office
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481/ pgradwoh@deq.state.id.us

IDAPA 58, TITLE 01, CHAPTER 10

RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 586 and 587.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

2004 - Environmental Affairs House Pending Rule (Yellow)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule was effective August 22, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Section 39-4405, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

**October 20, 2003, 5:30 p.m.
Department of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho.**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: This rulemaking is being undertaken to avoid the potential for radioactive material to be introduced into the environment by indiscriminate disposal. The rule would require that authorities be contacted prior to disposal.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final upon the conclusion of the 2004 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: The proposed rule regulates an activity not regulated by federal law. Federal law, via the Atomic Energy Act of 1954, as Amended (the AEA) regulates the disposal of a large portion of, but not all, radioactive materials. Individual states are left to regulate the disposal of non-AEA radioactive materials. Idaho fulfills this regulatory need with its Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, as Amended, IDAPA 58.01.10. (Idaho's Radioactive Materials Rules). This rule modifies Idaho's Radioactive Materials Rules by adding a notification requirement that applies to all persons with knowledge of radioactive materials being transferred for disposal to a prohibited location, an area not regulated by federal law.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to protect the public health, safety and welfare.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the temporary rulemaking schedule did not allow for the timing of it.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Brian Monson at (208)373-0502 or bmonson@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 22, 2003.

DATED this 22nd day of August, 2003.

2004 - Environmental Affairs House Pending Rule (Yellow)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Disposal of Radioactive Materials

Docket No. 58-0110-0301
Temporary and Proposed Rulemaking

Paula J. Gradwohl
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Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0110-0301

011. -- 0198. (RESERVED).

019. NOTIFICATION OF RADIOACTIVE MATERIALS.

Any person with knowledge of the transfer, or proposed transfer, of radioactive materials for disposal to any location other than a location authorized by Section 020 to receive radioactive materials for disposal shall notify the Department of the transfer as soon as the transfer takes place or as soon as the person learns of the transfer, or proposed transfer, whichever is sooner. (8-22-03)T

2004 - Environmental Affairs House Pending Rule (Yellow)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.23 - RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0123-0301

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2004 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized Sections 39-105, 39-107, and 67-5206, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 6, 2003, Volume 03-8, pages 162 through 167. The agency received no public comments on the proposed rule; however, the Board revised the rule at Sections 047 and 351. In Section 047, the number of days for publishing a legal notice was changed from 10 to 14. In Section 351, "demonstrate that" was changed to "state briefly why." The rulemaking record can be obtained by contacting the undersigned.

SECTION 39-107D, IDAHO CODE, STATEMENT: This rule regulates an activity not regulated by the federal government. The federal government does not regulate administrative procedures for the state of Idaho.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Paula Gradwohl at (208)373-0418, pgradwoh@deq.state.id.us.

DATED this 24th day of October, 2003.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58, TITLE 01, CHAPTER 23

RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

There are substantive changes from the proposed rule text.

**Only those sections that have changed from the original proposed
text are printed in this Bulletin following this notice.**

2004 - Environmental Affairs House Pending Rule (Yellow)

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-8, August 6, 2003, pages 162 through 167.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

*Language That Has Been Deleted From The Original Proposed Rule
Text Has Been Removed And New Language Is Shown In Italics*

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0123-0301

SECTION 047 (Entire Section)

047. PUBLIC NOTICE OF PETITION FOR CONTESTED CASE AND DECLARATORY RULING.

Within fourteen (14) days of the date a petition for contested case or declaratory ruling is filed with the Board, the Board shall give reasonable notice to the public. The methods for giving notice shall include, at a minimum, the following: ()

01. Publication. Publishing a one-time legal notice in the newspaper of general circulation in the county in which the petitioner resides or in which the facility or other subject of the petition is located. The legal notice shall describe the nature of the action initiated by the filing of the petition and shall include the date the petition was filed, the date by which petitions to intervene must be filed, and a method by which interested persons can obtain a copy of the petition. ()

02. Mail. Mailing a copy of the legal notice prepared in accordance with Subsection 047.01 to persons on any mailing list developed by the Department relating to the subject matter of the petition for contested case or declaratory ruling. ()

SECTION 351 (Entire Section)

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE.

Petitions to intervene must comply with Sections ~~200 through 349~~ 008, 044, and 300. The petition must set forth the name and address of the potential intervenor, ~~and must~~ state the direct and substantial interest of the potential intervenor in the proceeding, and *state briefly why the intervention would not unduly broaden the issues and cause delay or prejudice to the parties.* If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. (3-15-02)()

2004 - Environmental Affairs House Pending Rule (Yellow)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.23 - RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0123-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized Sections 39-105, 39-107, and 67-5206, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 20, 2003. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The Rules of Administrative Procedure Before the Board of Environmental Quality were first adopted by the Board of Environmental Quality in 2001. Since that time, several petitions to initiate contested cases have been filed with the Board, giving an opportunity to apply the rules to contested case proceedings. Certain difficulties in implementing the rules have been identified. The purpose of this rulemaking is to address those issues. In this rulemaking, public notice requirements have been established and procedures for filing petitions have been modified. This rulemaking also clarifies the procedures for intervention (Sections 351 through 355), review and reconsideration of interlocutory orders (Sections 710 and 711), and Section 101, Department Action Not Stayed. This rulemaking will affect any citizen of the state of Idaho and/or regulated industry appealing an action of the Department of Environmental Quality to the Board of Environmental Quality or having a direct and substantial interest in a proceeding filed with the Board.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: This rule regulates an activity not regulated by the federal government. The federal government does not regulate administrative procedures for the state of Idaho.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812 - 815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, May 7, 2003, Vol. 03-5, page 28.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Paula Gradwohl at (208) 373-0418 or pgradwoh@deq.state.id.us.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before September 3, 2003.

Dated this 25th day of June, 2003.

2004 - Environmental Affairs House Pending Rule (Yellow)

Paula J. Gradwohl
Environmental Quality Section
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Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0123-0301

008. FILING AND SERVICE OF DOCUMENTS.

01. Filing of Documents. (3-15-02)

a. All documents concerning actions governed by these rules shall be filed with the hearing coordinator at the following address: Hearing Coordinator, Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, FAX No. (208)373-0481. With the exception of petitions initiating a contested case, declaratory ruling, or rulemaking, pleadings and other documents may be filed by facsimile transmission (FAX). The originating party is responsible for retaining proof of filing by FAX. The documents are deemed to be filed on the date received by the hearing coordinator. Upon receipt of the filed document, the hearing coordinator will provide a conformed copy to the originating party. (3-15-02)()

b. Upon receipt of a petition initiating a contested case, rulemaking, or declaratory ruling, the hearing coordinator shall serve the petition upon the Department. In any proceeding involving a permit, the hearing coordinator shall serve upon the permit applicant or permit holder the petition and a notice informing the permit applicant or permit holder that they have twenty-one (21) days after the date of service of the petition to intervene in the proceeding and that they may be bound by any decision rendered in the proceeding. (3-15-02)

02. **Service Of Documents.** From the time a party files its petition initiating a contested case, rulemaking or, declaratory ruling, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties or representatives designated pursuant to Section 044, unless otherwise directed by order or notice or by the presiding officer. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The parties may serve courtesy copies upon the presiding officer. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

046. ~~047.~~ (RESERVED).

047. **PUBLIC NOTICE OF PETITION FOR CONTESTED CASE AND DECLARATORY RULING.**

Within ten (10) days of the date a petition for contested case or declaratory ruling is filed with the Board, the Board shall give reasonable notice to the public. The methods for giving notice shall include, at a minimum, the following: ()

01. **Publication.** Publishing a one-time legal notice in the newspaper of general circulation in the county in which the petitioner resides or in which the facility or other subject of the petition is located. The legal notice shall describe the nature of the action initiated by the filing of the petition and shall include the date the

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petition was filed, the date by which petitions to intervene must be filed, and a method by which interested persons can obtain a copy of the petition. ()

02. Mail. Mailing a copy of the legal notice prepared in accordance with Subsection 047.01 to persons on any mailing list developed by the Department relating to the subject matter of the petition for contested case or declaratory ruling. ()

(BREAK IN CONTINUITY OF SECTIONS)

050. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS.

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the Department must comply with this rule. (3-15-02)

01. Form. The petition shall: (3-15-02)

a. Identify the petitioner and state the petitioner's interest in the matter; (3-15-02)

b. State the declaratory ruling that the petitioner seeks; and (3-15-02)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. (3-15-02)

02. Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-15-02)

03. Filing. The petitioner shall file the original and two (2) copies of the petition with the hearing coordinator in accordance with Section 008. ()

051. ~~NOTICE OF PETITION FOR DECLARATORY RULING (RESERVED).~~

~~If the Board determines that the subject matter of a petition for declaratory ruling is of interest to the public, notice of receipt of the petition may be issued by the Board pursuant to the requirements of Chapter 1, Title 60, Idaho Code.~~ (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

101. DEPARTMENT ACTION NOT STAYED.

An action or inaction of the Department, or any portion thereof, which is the subject of a proceeding governed by these rules, is not stayed unless, upon a motion filed by a party, it is so ordered by the presiding officer. This section does not apply to Department action governed by Section 67-5254(1), Idaho Code. The stay may be ordered upon appropriate terms. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

211. PETITIONS TO INITIATE CONTESTED CASE -- DEFINED -- FORM AND CONTENTS.

01. Defined. The pleading initiating a contested case is called a "petition". (3-15-02)

02. Form And Contents. The form and contents of a petition initiating contested cases shall: (3-15-02)

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- a. Fully state the facts upon which it is based, including the specific alleged action or inaction of the Department; (3-15-02)
- b. Refer to the particular provisions of statute, rule, order or other controlling law upon which it is based; (3-15-02)
- c. State the relief sought; and (3-15-02)
- d. State the name of the person petitioned against (the respondent), if any. (3-15-02)
- e. State the basis for the petitioner's legal standing to initiate the contested case. (3-15-02)
- 03. Filing.** The petitioner shall file the original and two (2) copies of the petition with the hearing coordinator in accordance with Section 008. ()

212. RESPONSES IN CONTESTED CASES -- DEFINED -- FORM AND CONTENTS.

- 01. Defined.** The pleading filed by the respondent in response to the petition initiating the contested case is called a "response". (3-15-02)
- 02. Form And Contents.** The form and contents of a response to a petition initiating a contested case shall: (3-15-02)
- a. Separately admit or deny to each factual averment in the petition; (3-15-02)
- b. Separately admit or deny the applicability of each legal authority asserted in the petition; (3-15-02)
- c. Fully state any additional facts necessary to decision of the contested case; (3-15-02)
- d. Refer to any additional provisions of statute, rule, order or other controlling law upon which it is based; and (3-15-02)
- e. State the relief sought. (3-15-02)
- 03. Filing And Service.** Responses to petitions must be filed and served on all parties of record within twenty-one (21) days after service of the petition, unless an order or stipulation modifies the time within which a response may be made, or a motion to dismiss is filed within twenty-one (21) days. When a response is not timely filed under this rule, the presiding officer may enter a default order pursuant to Sections 700 through 702. ~~(3-15-02)~~()

(BREAK IN CONTINUITY OF SECTIONS)

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE.

Petitions to intervene must comply with Sections ~~200 through 349~~ 008, 044, and 300. The petition must set forth the name and address of the potential intervenor, ~~and must~~ state the direct and substantial interest of the potential intervenor in the proceeding, and demonstrate that the intervention would not unduly broaden the issues and cause delay or prejudice to the parties. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. ~~(3-15-02)~~()

352. TIMELY FILING OF PETITIONS TO INTERVENE.

- 01. General.** Petitions to intervene must be filed ~~at least~~ within fourteen (14) days ~~before the date set~~

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DEPARTMENT OF ENVIRONMENTAL QUALITY Rules of Administrative Procedure Before the DEQ Board

Docket No. 58-0123-0301
Proposed Rulemaking

~~for the prehearing conference~~ of publication of the notice of filing of the petition initiating a contested case or declaratory ruling as provided in Section 047 unless a different time is provided by order or notice. ~~(3-15-02)~~(____)

02. Proceedings Involving A Permit. In any proceeding involving a permit, petitions to intervene by the permit applicant or permit holder must be filed within twenty-one (21) days after service of the initiating petition as provided in Subsection 008.01.b. (3-15-02)

03. Petitions Not Timely Filed. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenor are bound by orders and notices entered earlier in the proceeding. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

354. ORDERS GRANTING INTERVENTION -- OBJECTIONS.

~~No petition to intervene will be acted upon fewer than seven (7) days after its filing.~~ Any party opposing a petition to intervene, must file the objection within seven (7) days after receipt of the petition to intervene and serve the objection upon all parties of record and upon the person petitioning to intervene. Responses shall be filed within seven (7) days after service of the objection. ~~(3-15-02)~~(____)

355. REVIEW OF ORDERS GRANTING OR DENYING INTERVENTION.

Any party may petition the Board to review an order granting or denying intervention. Petitions for review shall be filed within fourteen (14) days after service of the order. Responses shall be filed within fourteen (14) days after service of the petition for review. The Board may schedule oral argument in the matter before issuing a decision. (____)

~~3556.~~ -- 409. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

710. INTERLOCUTORY ORDERS.

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the ~~Board~~ presiding officer may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review ~~by appeal~~, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the statements set forth in Sections 730 or 740 or a statement substantially similar, the order is interlocutory. The following orders are always interlocutory: orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention (an order regarding intervention, however, may be reviewed by the Board as provided in Section 355); orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders limiting, compelling or refusing to compel discovery. ~~(3-15-02)~~(____)

711. REVIEW RECONSIDERATION OF INTERLOCUTORY ORDERS.

Any party ~~or person affected by an interlocutory order~~ may ~~petition the presiding officer issuing the order to review the~~ file a motion for reconsideration of an interlocutory order within fourteen (14) days after service of the order. The presiding officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the presiding officer's own motion, but will not on the presiding officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. ~~(3-15-02)~~(____)

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(BREAK IN CONTINUITY OF SECTIONS)

800. FORM AND CONTENTS OF PETITION TO INITIATE RULEMAKING.

This rule addresses petitions to initiate rulemaking as described by Section 67-5230, Idaho Code. (3-15-02)

01. Requirement. Any person petitioning for initiation of rulemaking must comply with this rule. (3-15-02)

02. Form And Contents. The form and contents of a petition ~~must be filed with the hearing coordinator as set out in Section 008 and~~ to initiate rulemaking shall: (3-15-02)()

a. Identify the petitioner and state the petitioner's interest(s) in the matter; (3-15-02)

b. Describe the nature of the rule or amendment to the rule urged to be promulgated and the petitioner's suggested rule or amendment; and (3-15-02)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the proposed rulemaking. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-15-02)

03. Filing. The petitioner shall file the original and two (2) copies of the petition with the hearing coordinator in accordance with Section 008. ()

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